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SUPREME COURT OF THE UNITED STATES

[redacted]

No. [redacted]

[redacted]

[redacted]

vs.

[redacted]

IN ERROR TO THE SUPREME COURT OF THE STATE OF [redacted]

[redacted]

FILED JUNE [redacted], 1896.

(16,925.)

(16,925.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 101.

STANTON WARBURTON, PLAINTIFF IN ERROR,

vs.

MATILDA B. WHITE AND AMELIA McDONALD.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 9, 1899.

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1 STANTON WARBURTON, Plaintiff in Error,
vs.
MATILDA B. WHITE ET AL., Defendants in Error.

Appeal from the supreme court of the State of Washington to the Supreme Court of the United States.

Stanton Warburton, Bates & Murray, Sullivan & Christian, attorneys for pl'ff in error.
Chas. S. Fogg, attorney for def'ts in error.

1½ No. 2822.

Filed Dec. 29, 1897.

C. S. REINHART, *Clerk.*

2 In the Superior Court of the State of Washington for Pierce County.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON, AMELIA MCDONALD, and Matilda White, Defendants. } 16229. Complaint.

Comes now the above-named plaintiff and for a cause of action against the above-named defendants complains and alleges:

I.

That the plaintiff is the owner in fee-simple of lot one (1), in block eleven hundred and five, in the city of Tacoma, according to the official plat now of record in the auditor's office of Pierce county, Washington.

II.

That said plaintiff is lawfully seized and in possession of the above-described property.

III.

That said defendants and each of them claim some right, title, and interest in the above-described property, which claim is adverse and hostile to the above-named plaintiff's title; that the claim of the said defendants and each of them is without any right whatever, and that neither said defendants nor any of them have any estate, right, title, or interest whatsoever in said lands or premises or any part thereof, and that said claim of defendants to said property is a cloud on plaintiff's title and greatly damages said plaintiff in the use and enjoyment of the above-described property.

That said claim of defendants prevents the plaintiff from selling or disposing of said premises, to his great injury.

Wherefore plaintiff prays—

1st. That the defendants and each of them may be required to

set forth the nature of their claim, and that all adverse claims of the defendants may be determined by decree of this court.

3 2d. That by said decree it be declared and adjudged that said defendants and each of them have no estate or interest whatever in or to said lands or premises, and that the title of plaintiff is good and valid.

3d. That the defendant be forever enjoined and debarred from asserting any claim whatever in or to said premises adverse to the plaintiff, and for such other relief as to this honorable court may seem meet and agreeable to equity, and for his costs of suit.

S. WARBURTON,
Att'y for Pl'ff.

STATE OF WASHINGTON, } ss:
County of Pierce, }

Stanton Warburton, being first duly sworn, on his oath deposes and says that he is the plaintiff in the above-entitled cause; that he has read the foregoing complaint and knows the contents thereof, and that he believes the same to be true.

S. WARBURTON.

Subscribed and sworn to before me this 4th day of May, 1897.
CHARLES A. MURRAY,
Notary Public in and for Washington, Residing at Tacoma.

Filed May 27, 1897.

W. F. GRASS, *Clerk*,
By W. M. METCALF.

4 In the Superior Court of the State of Washington for Pierce County, Dep't 1, Class 8.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON, AMELIA McDONALD, and MATILDA White, Defendants. } No. —.

Answer of Defendants.

Now come the aforesaid defendants, by their attorneys, Messrs. Hudson & Holt and J. C. Dillow, and for answer to the complaint in the aforesaid action allege and say:

1.

They deny each and every of the allegations contained in paragraphs one, two, and three of the complaint of the aforesaid action except as hereinafter admitted.

2.

They admit that they claim some right, title, and interest in the said premises, which said right, title, and interest is an undivided half interest in the property described in said complaint; which in-

terest, claim, and title they derive from their mother, Sophia D. Bacon, as follows:

That their said mother and Eli G. Bacon were husband and wife, residing in the Territory of Washington on or about June 26th, 1878; that the said Eli G. Bacon acquired title to the said property on said date and during said relationship; which said property then and there became community property, and was owned as such by the said Eli G. Bacon and Sophia D. Bacon, his wife, until the 28 day of July, 1880, when the said Sophia D. Bacon, the then wife of the said Eli G. Bacon, died intestate.

3.

That these defendants, being the legitimate issue of the body and children of the said Sophia Bacon, inherited jointly an undivided half interest in the said property under the law of the Territory of Washington in existence and in force at the time of the death of the said mother.

And now, having fully answered, the said defendants pray to be dismissed with the costs in their behalf expended.

HUDSON & HOLT,
Attorneys for Ellen T. Nelson, Defendant,
#403, '4, '5, *Berlin Bld., Tacoma, Wash.*
J. C. DILLOW,
Attorney for Amelia McDonald and Matilda White,
Defendants, 411 *Merchants' B'ld'g, Tacoma, Wn.*

STATE OF WASHINGTON, } *ss:*
County of Pierce, }

Ellen T. Nelson, being first duly sworn, on oath deposes and says that she is one of the defendants in the above-entitled action; that she has read the foregoing answer and knows the contents thereof, and that she believes the same to be true.

ELLEN T. NELSON.

Subscribed and sworn to before me this 28 day of May, 1897.

G. W. H. DAVIS,
Notary Public in and for said State,
[NOTARIAL SEAL.] *Residence at Tacoma, in said County.*

Filed Jun- 2, 1897.

W. F. GRASS, *Clerk,*
By W. M. METCALF, *Dep.*

6 In the Superior Court of the State of Washington in and for the County of Pierce, Department —, Class —.

STANTON WARBURTON, Plaintiff, vs. MATILDA B. WHITE, ELLEN T. NELSON, and Amelia McDonald, Defendants.	No. 16229. Amended Answer.

Come now the said defendants, Matilda B. White and Amelia McDonald, and for their separate and amended answer to the complaint of plaintiff in the above-entitled action state:

1.

They deny each and every allegation and averment contained in paragraphs one and two of the said complaint.

2.

They deny each and every allegation and averment contained in paragraph three of said complaint, save and except that the defendant Matilda B. White admits that she claims some right, title, and interest in and to the property therein described, and that such claim is adverse and hostile to the plaintiff's claim in said action.

3.

The defendant Matilda B. White avers that she is the owner in fee simple of the undivided one-third of said lot one, in block eleven hundred and five, in the city of Tacoma, according to the official plat thereof now of record in the auditor's office of Pierce county, Washington, subject only to the administration proceedings hereinafter referred to.

4.

That this defendant, Matilda B. White, derived her title and ownership of said property as follows: That on and prior to the 26th day of June, 1878, E. G. Bacon and Sophia D. Bacon were husband and wife and citizens and residents of the then Territory, now State, of Washington, and on the 26th day of June, 1878,
7 the said E. G. Bacon and Sophia D. Bacon, as such husband and wife, purchased of the then legal and equitable owner lot one, in block eleven hundred and five, in the city of Tacoma, Pierce county, Washington, according to the map of New Tacoma, W. T., filed in the office of the auditor of said county, and paid therefor with community funds, and said property then and thereby became and was the community property of said persons. The legal title to said property was taken in the name of the said E. G. Bacon, and the said E. G. Bacon and Sophia D. Bacon immediately entered into the actual and adverse possession of said property, and thereafter and at all times the said E. G. Bacon and Sophia D. Bacon, their heirs and legal representatives, held actual and adverse possession of said premises until on or about the month of January, 1897, and now hold same, except as hereinafter stated.

5.

That the said Sophia D. Bacon died intestate in Pierce county, Washington, on the 28th day of July, 1880, and thereafter such proceedings were had and done in the superior court of Washington for Pierce county, sitting as a court of probate, as resulted in the appointment, on or about April 21, 1893, of E. G. Bacon as administrator of said estate of Sophia D. Bacon, deceased; that the said E. G. Bacon duly qualified and entered upon the discharge of his duties as such administrator, and said administration is still in progress and unsettled.

6.

That the said real estate in controversy in this action was, at the time of the death of the said Sophia D. Bacon, the community property of the said Sophia D. Bacon and her husband, E. G. Bacon, and as such community property became and was a part and parcel of the property and assets of her said estate and subject to administration in the superior court of the State of Washington for Pierce county, and the same was and is now being administered upon in said court in the matter of said estate.

8

7.

That no decree of distribution has been made or rendered of any of the property of said estate or the property in controversy, and the same is now part and parcel of the property of said estate and has been at all times since the appointment of said administrator, and is now being administered by said probate court in the said administration proceeding.

8.

That prior to her marriage with E. G. Bacon the said Sophia D. Bacon was married to one Henry Barmeyer, and that the defendants Amelia McDonald and Matilda B. White are the legitimate issue of the bodies of said Sophia D. Barmeyer and Henry Barmeyer and of said marriage of said Sophia D. Bacon, whose name was then Sophia D. Barmeyer, and the said Henry Barmeyer.

9.

That the defendants comprise all the heirs-at-law of the said Sophia D. Bacon.

10.

That the said defendant, Amelia McDonald, prior to the commencement of this action, for a valuable consideration, sold, assigned, and conveyed all her right, title, and interest in and to the said real estate to the defendant Matilda B. White.

11.

That on or about the month of January, 1896, the said plaintiff unlawfully demanded, and during a part of the time since said date has wrongfully and unlawfully received, from the tenants in posses-

sion of said property a part of the rents of said property, and is now claiming and receiving one half of the rents of said property. The other half of said rents are being collected and received by the receiver appointed in this action.

12.

That, save and except the said unlawful receipt and collection
9 of said part of said rents since January, A. D. 1896, by plaintiff, and the collection of the remainder by the said receiver in this action, the defendants to this action and their said ancestors and the said administrator have been at all times in the actual, adverse, and hostile possession of said lot and premises from the said date and time of the purchase thereof by the said E. G. Bacon and Sophia D. Bacon, to wit, June 26, 1878.

Wherefore defendant Matilda B. White prays:

1.

That the plaintiff be required to set forth the nature of his claim to said property, and that all adverse claims of the plaintiff may be determined by decree of this court.

2.

That by said decree it be declared and adjudged that said plaintiff has no right, title, lien, interest, or estate whatever in, to, or upon said undivided one-third of said lands or premises, and that he be forever enjoined, barred, and estopped from having, claiming, or asserting any right, title, lien, interest, or estate in and to said lands and premises adverse to the defendant Matilda B. White.

3.

That the title and estate of the defendant Matilda B. White be established against the adverse claims of plaintiff, and that she be adjudged to be the absolute and unqualified owner of an undivided one-third of said property in fee-simple, subject only to the said administration proceedings in the matter of the said estate of Sophia D. Bacon, deceased, and its subjection to the payment of the community debts that have been or may be allowed or approved in said administration proceedings.

4.

That the defendant Amelia McDonald be dischar-ed with her proper costs.

10 5.

That the defendant Matilda B. White have such other and further relief as to the court may seem agreeable to equity and for costs of suit.

CHARLES S. FOGG,
Attorney for Matilda B. White and Amelia McDonald.

STATE OF WASHINGTON, } ss.:
County of Pierce, }

Matilda B. White and Amelia McDonald, being first duly sworn, on oath depose and say that they are the defendants in the above-entitled action; that they have read the foregoing answer and know the contents thereof, and that they believe the same to be true.

(Signed) MATILDA B. WHITE.
AMELIA C. McDONALD.

Subscribed and sworn to before me this 19th day of October, 1897.

CHARLES S. FOGG,
Notary Public for the State of Washington,
Residing at Tacoma, Washington.

11 In the Superior Court of the State of Washington for Pierce County.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON ET AL., Defendants. } Reply.

Comes now the plaintiff and in reply to the amended answer of defendants herein:

I.

Denies each and every allegation contained in paragraph III of said answer.

II.

In reply to the allegations contained in paragraph IV of said answer, plaintiff admits that prior to the 26th of June, 1878, E. G. Bacon and Sophia D. Bacon were husband and wife and citizens and residents of the then Territory, now State, of Washington; that on the 26th of June, 1878, said E. G. Bacon purchased of the then legal and equitable owner lot one, in block eleven hundred and five, in the city of Tacoma, Pierce county, W. T., according to the map of New Tacoma, W. T., filed in the auditor's office of said county, and paid therefor with community funds, and that said property then and there became the community property of said persons; that the legal title to said property was taken in the name of said E. G. Bacon, and that said E. G. Bacon immediately entered into the actual and adverse possession of said property and continued in possession up to about the month of January, 1896. Plaintiff denies each and every other allegation in said paragraph contained.

III.

In reply to the allegations contained in paragraph V, plaintiff admits that Sophia D. Bacon died intestate in Pierce county, Washington, on July 28th, 1880. Plaintiff denies that he has any knowledge or information sufficient to form a belief as to any of the other allegations contained in paragraph V.

12 IV.

In reply to the allegations contained in paragraph VI, plaintiff admits that the property in controversy was the community property of E. G. Bacon and Sophia D. Bacon, and denies each and every other allegation therein contained.

V.

Plaintiff denies that he has any knowledge or information sufficient to form a belief as to the allegations contained in paragraph VII of defendants' amended answer.

VI.

In reply to the allegations contained in paragraph XI of said amended answer, plaintiff admits that from the month of January, 1896, plaintiff has been collecting the rents from the property in controversy, and that he is still collecting the rents from one-half thereof. The one-third of such rents has been collected by the receiver appointed in this action, but plaintiff alleges that since the appointment of the receiver in this action plaintiff has been collecting two-thirds of said rents, and the receiver has been collecting the other one-third.

VII.

Plaintiff admits that E. G. Bacon has been in the adverse and hostile possession of said lot from the time of the purchase of said lot until January, 1896; that since then plaintiff has received the larger share of the rents from said property, but plaintiff denies each and every other allegation in said paragraph XII contained.

STANTON WARBURTON,
Attorneys for Plaintiff.

STATE OF WASHINGTON, } ss:
County of Pierce, }

Stanton Warburton, being first duly sworn, on oath deposes and says that he is the plaintiff in the above-entitled action; that
13 he has read the foregoing reply and knows the contents thereof, and that he believes the same to be true.

STANTON WARBURTON.

Subscribed and sworn to before me this 9th day of November, 1897.

CHARLES A. MURRAY,
Notary Public in and for Washington, Residing at Tacoma.

Filed in open court, dep't No. 1, 10 day of Nov., 1897.

W. F. GRASS, *Clerk.*
LEIBFRIED, *Deputy.*

14 Superior Court, Pierce County, State of Washington. Department 1, Class 8.

S. WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON ET AL., Defendant-. } No. 16229. Notice of Trial.

Take notice that before the above-named court, at the court-house, in the city of Tacoma, said county and State, on Saturday, the 9th day of October, 1897, the above-entitled action will be brought on for assignment for trial; and you are further notified that the issues of law and fact in said action will be brought on for trial at the time then set by the court.

S. WARBURTON,
In Pro. Per., Attorney for —— ——.

To Hudson & Holt, Matilda White, and Amelia McDonald, attorney- for —— ——.

Service of the within admitted this 1st day of Oct., 1897.
HUDSON & HOLT,
Att'y- for Def't Ellen T. Nelson.

Service of the within admitted this 1st day of October, 1897.
MATILDA B. WHITE.
AMELIA C. McDONALD.

Filed Oct. 2, 1897.
W. F. GRASS, *Clerk*,
By W. M. METCALF, *Dep.*

14½ S. WARBURTON
vs.
ELLEN T. NELSON ET AL. } # 16229. Trial Record.

Now, on this 10th day of Nov., 1897, this cause coming on for trial by the court, comes the plaintiff and defendant-, with their respective counsel, and the trial of the cause proceeds on an agreed statement of facts, and after argument of counsel it is concluded, and the court, being fully advised and after due deliberation, finds for the defendant- and directs that the findings may be prepared accordingly.

J. A. WILLIAMSON, *Judge.*

Entered, Journal 64, page 346, Nov. 10th, 1897.

15 In the Superior Court of the State of Washington for Pierce County.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON, MATILDA WHITE, and Amelia McDonald, Defendants. } # 16229. Stipulation.

It is hereby agreed and stipulated by and between the above-named plaintiff and the above-named defendant, Ellen T. Nelson,

that the plaintiff shall have and take from J. C. Weatherred, receiver, one-third of the amount heretofore collected by him on lot one (1), in block eleven hundred and five (1105), in the city of Tacoma, as receiver in said cause; that Ellen T. Nelson makes no claim to any part of the rents received by said receiver. It is further agreed that said plaintiff may hereafter collect and receive as rents two-thirds of the rents from said property.

It is further agreed and stipulated that the plaintiff may enter an order dismissing the above action as to Ellen T. Nelson.

S. WARBURTON,
Attorneys for Plaintiff.
HUDSON & HOLT,
Attorneys for Defendant Ellen T. Nelson.

Filed Oct. 23, 1897.
W. F. GRASS, *Clerk.*
METCALF, *Dep.*

16 In the Superior Court of the State of Washington in and for the County of Pierce.

STANTON WARBURTON, Plaintiff, *vs.* MATILDA B. WHITE, ELLEN T. NELSON, and AMELIA McDONALD, Defendants.	No. 16229.

Come now the above-named plaintiff and above-named defendants, by their attorneys, and submit to the above entitled court the following as the agreed statement of facts in the above cause:

1.

That on October 5, 1873, one E. G. Bacon and Sophia D. Bacon were married in the State of California and lived together as husband and wife up to the time of the death of said Sophia D. Bacon.

2.

That on October 10, 1873, said E. G. Bacon and Sophia D. Bacon removed to and became residents and citizens of the then Territory now State, of Washington.

3.

That during the year 1877 said E. G. Bacon purchased with community funds acquired subsequent to and during his marriage with said Sophia D. Bacon from the then owner in fee-simple lot one, in block eleven hundred and five, in the city of Tacoma, county of Pierce, State of Washington, according to the "map of New Tacoma, W. T.," filed in the office of the auditor of said county, and said E. G. Bacon and Sophia D. Bacon immediately took up their residence on said property.

4.

That above-named defendants, Amelia McDonald and Matilda White, are the legitimate, lawful issue of the body of Sophia D. Bacon

by a marriage prior to her marriage with E. G. Bacon; that the
17 defendant Ellen T. Nelson is the legitimate, lawful issue of the body of E. G. Bacon and Sophia D. Bacon, and the above-named comprise all the heirs of E. G. Bacon and Sophia D. Bacon, and comprise all the children and heirs-at-law of either of said persons.

5.

That in July, 1880, Sophia D. Bacon died intestate, leaving said E. G. Bacon, her husband, surviving her, as well as her said children, the defendants in this action.

6.

That on the 8th day of April, 1895, the plaintiff obtained a judgment in the above-named court against E. G. Bacon upon an indebtedness incurred in August, A. D. 1892; that on the 2d day of March, 1896, the sheriff of Pierce county sold the aforementioned premises to plaintiff under an execution issued on said judgment; that thereafter said sale of said premises on said execution was duly confirmed by the superior court of Pierce county, State of Washington; that thereafter and after the time for redemption had expired, to wit, on the 4th day of May, 1897, the sheriff of Pierce county made a deed conveying to plaintiff all the right, title, and interest of E. G. Bacon in and to the property aforementioned; that on the 12th day of October, 1897, said Ellen T. Nelson conveyed any and all right, title, and interest that she had in and to said property as heir-at-law of E. G. Bacon or Sophia D. Bacon or otherwise to plaintiff.

7.

That after plaintiff had purchased said property at sheriff's sale, as above set forth, and prior to the purchase by plaintiff of any interest of Ellen T. Nelson in said property, said E. G. Bacon died intestate.

8.

It is stipulated that this court, in this action, has full jurisdiction to hear, try, and determine any and all issues in this
18 case.

9.

That the said defendant, Amelia McDonald, has sold and conveyed by deed to said Matilda B. White all her estate, interest, and claim to said property.

STANTON WARBURTON, *Plaintiff.*
MATILDA B. WHITE,
AMELIA C. McDONALD, *Defendants.*
CHARLES S. FOGG,
Attorney for Defendants.

Filed Oct. 26, 1897.

W. F. GRASS, *Clerk,*
By W. M. METCALF, *Dep.*

19 In the Superior Court of the State of Washington for Pierce County.

STANTON WARBURTON Plaintiff,
vs.
ELLEN T. NELSON, MATILDA WHITE, and AMELIA McDONALD, Defendants.
} # 16229. Order.

Pursuant to stipulation of the parties hereto, it is hereby ordered that this action be dismissed as to the defendant Ellen T. Nelson.

J. A. WILLIAMSON, *Judge.*

Nov. 10th, 1897.

Ent., J. 64, p. 356, dep. 1, Nov. 13, '97.

20 In the Superior Court of the State of Washington for Pierce County.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON ET AL., Defendants.
} # 16229.

The plaintiff upon the argument at the trial claimed that if the court should hold that the law of 1879, entitled An act regulating and defining the property rights of husband and wife, approved November 14th, 1879, should be held to be retroactive in effect and force, it would take away from Mr. Bacon the right of survivorship in the property in controversy and would be contrary to article 1, section 10, of the Constitution of the United States, in that it would impair the obligation of the deed or contract by which Mr. Bacon acquired said property and would deprive said Bacon and his successors and assigns of the right of survivorship in the property in controversy, which was a vested right under the contract or deed and the laws in force in the Territory at the time the property was acquired.

Plaintiff also claimed that if said law was given such force and effect it would be depriving Mr. Bacon, his successors and assigns, of property without due process of law and contrary to and in contravention of article 14 of the Constitution of the United States.

Plaintiff claims the protection of both of said provisions of the Constitution of the United States.

S. WARBURTON,
Attorneys for Plaintiff.

Filed in open court, dep't No. 1, 10 day of Nov., 1897.

W. F. GRASS, *Clerk.*
LEIBFRIED, *Deputy.*

21 In the Superior Court of the State of Washington for Pierce County.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON ET AL., Defendants.
} # 16229. Plaintiff's Proposed Findings of Fact and Conclusions of Law.

This cause coming on duly to be heard, the plaintiff appearing in person and by his attorney-, Sullivan & Christian and Bates & Murray, and the defendant Ellen T. Nelson not appearing, this cause having been dismissed as to her on plaintiff's request, and the defendants Amelia McDonald and Matilda B. White appearing, by their attorney, Charles S. Fogg, and a trial having been had of the issues joined herein, and the court being fully advised in the premises, whereupon the court finds as—

Matters of Fact.

I.

That on October 5th, 1873, one E. G. Bacon and Sophia D. Bacon were married in the State of California, and lived together as husband and wife up to the time of the death of said Sophia D. Bacon.

II.

That on October 10th, 1873, said E. G. Bacon and Sophia D. Bacon removed to and became residents and citizens of the then Territory, now State, of Washington.

III.

That on the 26th day of June, in the year 1878, said E. G. Bacon purchased, with community funds acquired subsequent to and during his marriage with said Sophia D. Bacon, from the then owner, in fee-simple, lot one, in block eleven hundred and five, in the city of Tacoma, county of Pierce, State of Washington, according to the "map of New Tacoma, W. T.," filed in the office of the auditor of said county, and E. G. Bacon and Sophia D. Bacon immediately took up their residence on said property.

22 IV.

That above-named defendants, Amelia McDonald and Matilda White, are the legitimate lawful issue of the body of Sophia D. Bacon by a marriage prior to her marriage with E. G. Bacon; that the defendant Ellen T. Nelson is the legitimate lawful issue of the body of E. G. Bacon and Sophia D. Bacon, and the above named comprise all the heirs of E. G. Bacon and Sophia D. Bacon, and comprise all the children and heirs-at-law of either of said persons.

V.

That in July, 1880, Sophia D. Bacon died intestate, leaving said E. G. Bacon, her husband, surviving her, as well as her said children, the defendants in this action.

VI.

That on the 8th day of April, 1895, the plaintiff obtained a judgment in the above-named court against E. G. Bacon upon an indebtedness incurred in August, 1892; that on the 2d day of March, 1896, the sheriff of Pierce county sold the aforementioned premises to plaintiff under an execution issued on said judgment; that thereafter said sale of said premises on said execution was duly confirmed by the superior court of Pierce county, State of Washington; that thereafter and after the time for redemption had expired, to wit, on the 4th day of May, 1897, the sheriff of Pierce county made a deed conveying to plaintiff all the right, title, and interest of E. G. Bacon in and to the property aforementioned; that on the 12th day of October, 1897, said Ellen T. Nelson conveyed any and all right, title, and interest that she had in and to said property, as heir-at-law of E. G. Bacon or Sophia D. Bacon, or otherwise, to plaintiff.

VII.

That after plaintiff had purchased said property at sheriff's sale, as above set forth, and prior to the purchase by plaintiff of any interest of Ellen T. Nelson in said property, said E. G. Bacon died intestate.

23 VIII.

It is stipulated that this court in this action has full jurisdiction to hear and determine any and all issues in this case.

IX.

That the defendant Amelia McDonald has sold and conveyed by deed to said Matilda B. White all her estate, interest, and claim to said property.

X.

That at the commencement of the trial of this cause, upon motion of plaintiff, in pursuance of a stipulation between plaintiff and attorneys for defendant Ellen T. Nelson, the action was dismissed as to the said defendant, Ellen T. Nelson.

From which findings of fact the court concludes as—

Matters of Law.

I.

That the plaintiff is the owner in fee-simple of and entitled to a decree herein quieting his title to the property in controversy in this action, to wit, lot one, in block eleven hundred and five, in the city of Tacoma, according to the recorded map thereof filed of record in the office of the auditor of Pierce county, Washington.

—— ——, *Judge.*

The foregoing proposed findings of fact & conclusions of law, as submitted by the plaintiff, are each of them hereby denied; to all which the plaintiff duly excepts.

J. A. WILLIAMSON, *J.*

CHARLES S. FOGG,
Att'y for Amelia McDonald, Matilda B. White.

Filed in open court, dep't No. 1, 13 day of Nov., 1897.
W. F. GRASS, *Clerk.*
LEIBFRIED, *Deputy.*

24 In the Superior Court of the State of Washington for Pierce County.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON ET AL., Defendants. } No. 16229.

Comes now the plaintiff above named, by his attorneys, Bates & Murray and Sullivan & Christian, and files herewith his written objections to the proposed findings of fact and conclusions of law submitted by the defendant in the above-entitled cause, to wit:

1. Plaintiff objects to the proposed finding of fact No. 10 upon the ground that no testimony or evidence of any sort upon the trial was offered to sustain the said finding, and upon the further ground that this action was tried upon an agreed statement of facts, in writing, entered into and filed in this cause prior to the hearing thereof, and because the said agreed statement of facts contains all the facts that were before this court on the hearing of this cause, and the said agreed statement of facts is silent as to any of the matters or things suggested by said proposed finding of fact No. 10.

2. The plaintiff objects to proposed finding of fact No. 11 submitted by the defendant upon each and every ground assigned by him as an objection to proposed finding of fact No. 10.

3. Plaintiff objects to the proposed conclusion of law No. 1 submitted by defendant upon the ground that said conclusion is contrary to law and is not supported by the testimony and findings of fact in this case.

4. Plaintiff objects to proposed conclusion of law No. 2 upon the ground that the same is against the evidence and is contrary to the findings of fact in this cause, and because the same is contrary to the law. Plaintiff specifically objects to said proposed con-
25 clusion No. 2 on the ground that under the laws in force at the time the property was purchased E. G. Bacon was the owner of the property and was entitled to the succession to all the property in case of the prior death of Mrs. Bacon, and that at the time of the death of Mrs. Bacon, in 1880, Mr. Bacon was the owner in fee-simple of all of said property; that to give the law of 1879, entitled An act regulating and defining the property rights of husband and wife, approved November 14th, 1879, the construction, effect, and force given by the court, to wit, that it took from Mr.

Bacon the right of succession to the whole of the property and the right to dispose of it, would be to give it a retroactive force, contrary to section 31 of said act, and to give it such a retroactive force and take away the right of survivorship in said property and take away the right to dispose of it would be contrary to article 1, section 10, of the Constitution of the United States, in that it would impair the obligation of the contract by which Mr. Bacon acquired said property and would deprive him, his successors and assigns, of the right of survivorship to the property in controversy, which was a vested right under the contract and the laws in force in the Territory when the property was acquired, and upon the further ground that if said law is given said effect and force above mentioned it would be depriving Mr. Bacon, his successors and assigns, of property without due process of law and be contrary to and in contravention of article 14 of the Constitution of the United States, and plaintiff claims the protection of both said provisions above specified of the Constitution of the United States in this action.

5. Plaintiff objects to the proposed conclusion of law No. 3 upon the ground that the same is not supported by the testimony and facts in this case, because it is contrary to the law, and because it is contrary to the evidence and facts in this case.

6. Plaintiff objects to proposed conclusion of law No. 4 upon the ground that there is no testimony to support the same, and
26 because it is not supported by the evidence and facts in this case, and because it is contrary to the law and contrary to the findings of fact.

7. Plaintiff objects to proposed conclusion No. 5 upon the ground that the same is contrary to the law and because there is no finding of fact to support the same.

8. Plaintiff objects to proposed conclusion of law No. 6 upon the ground that there is no finding of fact to support the same, and because it is contrary to the facts, and because the matters therein suggested were not in issue on the trial, and because the same is against the law.

S. WARBURTON,
SULLIVAN & CHRISTIAN,
BATES & MURRAY,
Attorneys for Plaintiff.

The foregoing exceptions to findings of fact & conclusions of law in this cause are each of them hereby denied; to all which plaintiff excepts.

J. A. WILLIAMSON, *Judge.*

Filed in open court, dep't No. 1, 13 day of November, 1897.

W. F. GRASS, *Clerk.*
LEIBFRIED, *Deputy.*

27 In the Superior Court of the State of Washington in and for the County of Pierce, Department 1, Class 8.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON, AMELIA MCDONALD, and Matilda B. White, Defendants.

No. 16229. Findings of Fact and Conclusions of Law.

This cause coming on duly and regularly for trial, the plaintiff appearing in person and by his attorney, Walter Christian, and the defendant Ellen T. Nelson failing to appear, and the action, at the request of plaintiff, being dismissed as to the said defendant, Ellen T. Nelson, and the defendants Amelia McDonald and Matilda B. White appearing by their attorney, Charles S. Fogg—a trial having been had upon the issues joined by plaintiff's complaint herein and the amended and separate answer of the defendants Matilda B. White and Amelia McDonald and the reply of plaintiff to said amended and separate answer—the court, being now fully advised in the premises, doth find and make the following

Findings of Fact.

1. That on October 5, 1873, E. G. Bacon and Sophia D. Bacon were married in the State of California, and on the 10th day of October, 1893, removed to and became residents and citizens of the then Territory, now State, of Washington, and lived together as husband and wife up to the time of the death of the said Sophia D. Bacon, in 1880.

2. That during the year 1877 the said E. G. Bacon purchased, with community funds acquired subsequent to and during his marriage with the said Sophia D. Bacon, from the then owner, in fee-simple, lot one, in block eleven hundred and five, in the city of Tacoma, county of Pierce, State of Washington, according to the map of New Tacoma, W. T., filed in the office of the auditor of said county, and said E. G. Bacon and Sophia D. Bacon immedi-
28 ately took up their residence on said property, and that the property in controversy in this action and above described was the community property of said E. G. Bacon and Sophia D. Bacon.

3. That the defendants Amelia McDonald and Matilda B. White are the legitimate, lawful issue of the body of Sophia D. Bacon by a marriage prior to her marriage with E. G. Bacon; that the defendant Ellen T. Nelson is the legitimate, lawful issue of the bodies of E. G. Bacon and Sophia D. Bacon, and that the above named comprise all the heirs of E. G. Bacon and Sophia D. Bacon and comprise all the children and heirs-at-law of either of said persons.

4. That in July, 1880, Sophia D. Bacon died intestate in Pierce county, Washington, leaving the said E. G. Bacon, her husband, as well as her said children, the defendants in this action, surviving her.

5. That on the 8th day of April, 1895, the plaintiff obtained a

judgment in this court against the said E. G. Bacon upon an indebtedness incurred in August, 1892; that on the 2d day of March, 1896, the sheriff of Pierce county sold the aforementioned premises to the plaintiff under an execution issued on said judgment; that thereafter said sale of said premises on said execution was duly confirmed by the superior court of Washington in and for Pierce county; that thereafter and after the time for redemption had expired, to wit, on the 4th day of May, 1897, the sheriff of Pierce county made a deed conveying to plaintiff all the right, title, and interest of E. G. Bacon in and to the property aforementioned; that on the 12th day of October, 1897, said Ellen T. Nelson conveyed any and all right, title, and interest that she had in and to said property, as heir-at-law of said E. G. Bacon and Sophia D. Bacon or otherwise, to plaintiff.

6. That after plaintiff had purchased said property at sheriff's sale, as above set forth, and prior to the purchase by plaintiff of any interest of Ellen T. Nelson in said property said E. G. Bacon died intestate.

7. That said defendant, Amelia McDonald, has sold and conveyed by deed to said Matilda B. White all her estate, interest, and claim to said property.

8. That prior to her marriage with E. G. Bacon the said Sophia D. Bacon was married to one Henry Barmeyer, and that the defendants Amelia McDonald and Matilda B. White are the legitimate issue of the bodies of said Sophia D. Bacon and Henry Barmeyer and of said marriage of said Sophia D. Bacon, whose name was then Sophia D. Barmeyer, and the said Henry Barmeyer.

9. That at plaintiff's request and in pursuance of stipulation between pl'ff and att'y for def't Ellen T. Nelson at the commencement of the trial of this cause the defendant Ellen T. Nelson was dismissed out of the case, and she made no appearance at the trial of this cause.

10. That upon the petition of the defendants Ellen T. Nelson and Matilda B. White an order was made in this cause on or about the 30th day of June, 1897, appointing J. C. Weatherred, Esq., receiver in this action for the purpose of collecting one-half the rents of the property in controversy in this action, and that the costs of said receivership abide the final result of this action and be subject to the further order of this court.

11. That in pursuance of said order the said J. C. Weatherred duly qualified as such receiver and entered upon the discharge of his duties and has not yet been discharged and is now acting as receiver under said appointment.

And upon the foregoing findings of fact the court makes the following

Conclusions of Law.

1. That the plaintiff is the owner of and is entitled to a decree herein quieting his title to an undivided two-thirds of the property in controversy in this action.

2. That the defendant Matilda B. White is the owner of

and entitled to a decree herein quieting her title to an undivided one third of the property in controversy in this action, as prayed for in the amended and separate answer of the defendants Matilda B. White and Amelia McDonald, filed herein.

3. That the defendants Matilda B. White and Amelia McDonald have and recover of and from the plaintiff in this action the costs and disbursements to be taxed herein.

4. That the said receiver, J. C. Weatherred, forthwith make report to this court in this action of his acts and doings as such receiver, showing, among other things, all receipts and disbursements by him as such receiver; that of the amounts received by said receiver the said defendant, Matilda B. White, is entitled to receive two-thirds of the same, and the said defendant, Ellen T. Nelson, or her assignee, one-third thereof.

5. That the costs of said receivership shall be borne and paid by plaintiff in this action, in accordance with the order of court made herein on the 30th day of June, 1897.

6. That upon the filing of said report by said receiver and the approval of same by this court and the disbursement by said receiver of the moneys received by him and the filing of proper vouchers therefor in this action the said receiver and the sureties upon his official bond as such be released and discharged.

Done in open court this — day of November, 1897.

J. A. WILLIAMSON, *Judge.*

Filed in open court, dep't No. 1, 13 day of Nov., 1897.

W. F. GRASS, *Clerk,*
—— LIEBFRIED, *Deputy.*

Received copy of the within this 11th of Nov., 1897.

S. WARBURTON, *Plaintiff.*

31 In the Superior Court of the State of Washington for Pierce County.

STANTON WARBURTON, Plaintiff, *vs.* ELLEN T. NELSON ET AL., Defendants. } No. 16229. Bill of Exceptions.

Comes now the plaintiff above named, and after the court signed defendants' proposed findings of fact & conclusions of law, and files his exceptions to the findings of fact and conclusions of law as proposed by the attorneys for defendants as follows:

I.

Plaintiff excepts to conclusion of law numbered I on the ground that the conclusion should be that the plaintiff is the owner of the property in controversy and is entitled to a decree quieting his title thereto.

II.

Plaintiff excepts to the proposed conclusion of law numbered II on the ground that it is contrary to the findings of fact and the law;

on the further ground that under the laws in force at the time the property was purchased and the deed taken E. G. Bacon was the owner of the property and was entitled to the succession to all the property in case of the prior death of Mrs. Bacon, and that at the death of Mrs. Bacon, in 1880, Mr. Bacon was the owner in fee-simple of all said property; that to give the law of 1879, entitled An act regulating and defining the property rights of husband and wife, approved November 14th, 1879, the construction, effect, and force given by the court, to wit, that it took away from Mr. Bacon the right of succession to the whole of the property and the right to dispose of it, would be to give it a retroactive force, contrary to section 31 of said act, and to give it such a retroactive force and take away the right of survivorship in said property and take away the right to dispose of it would be contrary to article I, section 10, of the Constitution of the United States, in that it would impair the
32 obligation of the deed or contract by which Mr. Bacon acquired said property, and would deprive said Bacon, his successors and assigns, of the right of survivorship in the property in controversy which was a vested right under the contract or deed and the laws in force in the Territory at the time the property was acquired. Plaintiff further excepts to said conclusion on the ground that if said law is given said effect and force above mentioned it would be depriving Mr. Bacon, his successors and assigns, of property without due process of law and contrary to and in contravention of article 14 of the Constitution of the United States, and plaintiff claims the protection of both said provisions of the Constitution of the United States.

III.

Plaintiff excepts to conclusion of law numbered III.

IV.

Plaintiff excepts to conclusion of law numbered IV.

V.

Plaintiff excepts to conclusion of law numbered V.

VI.

Plaintiff excepts to conclusion of law numbered VI.

BATES & MURRAY,
SULLIVAN & CHRISTIAN,
S. WARBURTON,
Attorneys for Plaintiff.

The foregoing exceptions are hereby allowed.

J. A. WILLIAMSON, *Judge.*

Filed in open court, dep't No. 1, 13 day of Nov., 1897.

W. F. GRASS, *Clerk.*
—— LIEBFRIED, *Deputy.*

33 In the Superior Court of the State of Washington for Pierce County, Department No. 1.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON ET AL., Defendants. } No. 16229.

This cause coming on to be heard upon the proposed findings of fact and conclusions of law proposed by the defendant-, and the plaintiff having filed certain objections thereto, said objections were by the court overruled; to which the plaintiff excepted.

The plaintiff further presented certain proposed findings, which were filed and which the court refused to make; to which the plaintiff then & there excepted.

The court then made and signed the findings proposed by the defendant-; to which findings the plaintiff filed written exceptions, and all of said exceptions were allowed.

J. A. WILLIAMSON, *Judge.*

Ent. J. 64, p. 357, dep. 1.
Nov. 13, '97.

34 In the Superior Court of the State of Washington in and for the County of Pierce, Department 1, Class 8.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON, AMELIA MCDONALD, and Matilda B. White, Defendants. } No. 16229. Decree.

This cause coming on duly and regularly for trial, the plaintiff appearing in person and by his attorneys, Bates & Murray and Sullivan & Christian, and the defendant Ellen T. Nelson failing to appear and being dismissed out of this action, and the defendant-Matilda B. White and Amelia McDonald appearing by their attorney, Charles S. Fogg, it being mutually agreed in open court that this action should be tried by the court without the intervention of a jury as an equitable action, and a trial having been had upon the issues formed by plaintiff's complaint, the amended and separate answer of the defendants Matilda B. White and Amelia McDonald and the reply of the plaintiff to said amended and separate answer, and the court having heretofore made and filed herein its findings of fact and conclusions of law, now, upon motion of Charles S. Fogg, Esq., attorney for the defendants Matilda B. White and Amelia McDonald, for a decree in accordance with the pleadings, issues, evidences, and said findings of fact and conclusions of law, the court being fully advised in the premises—

It is considered, ordered, adjudged, and decreed:

1. That the plaintiff is the owner and entitled to the possession of an undivided two-thirds of the lot and premises in controversy in this action, to wit, lot one, in block eleven hundred and five, in the city of Tacoma, county of Pierce, State of Washington, according to the map of New Tacoma, W. T., filed and recorded in the

office of the auditor of said county, and his title and estate therein is hereby quieted and established against any and all adverse
35 claims of the defendants Matilda B. White and Amelia McDonald herein or any one claiming or to claim by, through, or under the said defendants or either of them.

2. That the defendant Matilda B. White is the owner and entitled to the possession of an undivided one-third of the lot and premises in controversy in this action and described in the last preceding paragraph, and her title and estate therein is hereby quieted and established against any and all adverse claims of the plaintiff or any one claiming or to claim by, through, or under the plaintiff.

3. That the plaintiff, Stanton Warburton, and the defendant Matilda B. White are each hereby separately and severally restrained and enjoined, as well as all persons claiming or to claim by, through, or under said plaintiff or the said defendant, from having, claiming, or asserting any right, title, lien, interest, or estate in, to, or upon the said undivided portions and parts of said property or the possession thereof herein adjudged and decreed to belong to the other party.

4. Whereas J. C. Weatherred was heretofore appointed a receiver of the rents of the premises in controversy herein *pendente lite* and has filed his report to this date, and it appearing to the court that said receiver has faithfully performed all of the duties of said trust, and that he has now in his hands the sum of $233.33, moneys collected and received by him as such receiver, and that it is not necessary to longer continue the said receivership, the court finds that the services of said receiver are of the fair and reasonable value of $32.50, and he is hereby allowed and awarded the said sum as and for his full compensation as receiver herein.

5. That the receiver, J. C. Weatherred, shall surrender and deliver over to said defendant, Matilda B. White, the possession of the undivided one-third of the whole of said property hereinbefore described, the same being now held by him as such
36 receiver under the prior orders of this court, and shall pay over to said Matilda B. White two-thirds of all the moneys received or collected by him as such receiver in this action, less the amount of his compensation as above allowed, and take her receipt therefor and file the same as a voucher in this cause, and that said receiver and his bondsmen thereupon stand discharged.

5. That all of the costs and expenses of said receivership shall be borne and paid by plaintiff, and that the defendants Matilda B. White and Amelia McDonald have and recover of and from the plaintiff the costs and disbursements to be taxed in this action, amounting to and taxed at $18.00, as well as the costs and expenses of said receivership, amounting to the sum of $32.50, as allowed and fixed by the court, and that execution issue against plaintiff therefor.

Done in open court this 17th day of November, 1897.

J. A. WILLIAMSON, *Judge.*

Ent., J. 64, p. 364, dep. 1, Nov. 17, '97.

37 No. 16229.

The plaintiff saves an exception to the decree rendered and entered herein, except that part which finds that the plaintiff is the owner and entitled to the possession of an undivided two-thirds of the lot and premises in controversy, and decrees that his title thereto be quieted in him, and except the part of said decree restraining the defendants from claiming or asserting any right to said undivided two-thirds.

Ent., J. 64, p. 367, dep. 1, Nov. 17, '97.

38 In the Superior Court of the State of Washington in and for the County of Pierce, Department 1, Class 8.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON ET AL., Defendants. } No. 16229.

This cause coming on to be heard upon the motion of Charles S. Fogg, Esquire, attorney for the defendants Matilda B. White and Amelia McDonald, for a decree in accordance with the findings of fact and conclusions of law heretofore made and found, and the court having caused its decree to be entered, the plaintiff now here in open court and at the time the order and decree herein is rendered and made, all parties being present, gives notice of his appeal and does appeal from this court to the supreme court of the State of Washington from said decree and each and every part thereof, except that part which finds that the plaintiff is the owner and entitled to the possession of an undivided two-thirds of the lot and premises in controversy, and decrees that his title thereto be quieted in him, and except the part of said decree restraining the defendants from claiming or asserting any right to said undivided two-thirds, and the clerk is hereby directed to make an entry of said notice in the journal of the court; and the plaintiff having moved the court for an order fixing the amount of a supersedeas bond for the purpose of effecting a stay of proceedings herein, the court hereby orders and prescribes that the amount of such bond shall be eight hundred dollars, in addition to the cost bond; upon the making and filing of which bond, conditioned as required by law, said decree and all proceedings herein, in so far as said decree is appealed from, shall be stayed.

J. A. WILLIAMSON, *Judge.*

Ent., J. 64, p. 366, dep. 1, Nov. 17, '97.

39 In the Superior Court of the State of Washington in and for the County of Pierce, Department 1.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON, AMELIA McDONALD, and MATILDA B. White, Defendants. } No. 16229.

Know all men by these presents that we, Stanton Warburton, as principal, and Iris Warburton and A. R. Nicol, as sureties, are held and firmly bound unto the above-named defendants and unto each one of them in the full sum of eight hundred dollars, lawful money of the United States; for the payment of which sum, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Dated at Tacoma, Washington, this 19 day of November, 1897.

The condition of the above bond is such that heretofore and on the — day of November, 1897, in the above-entitled court, a decree was rendered and made in the above-entitled cause in favor of the above-named defendants, Matilda B. White and Amelia McDonald, and against the above-named plaintiff, Stanton Warburton, wherein it was ordered, adjudged, and decreed *inter alia* that the defendant Matilda B. White is the owner and entitled to the possession of an undivided one-third of the lot and premises in controversy in the above-entitled action, to wit:

Lot one (1), in block eleven hundred and five (1105), according to the map of New Tacoma, W. T., filed and recorded in the office of the auditor of said Pierce county, Washington, and that her title and estate therein was thereby quieted and established against any and all adverse claims of the plaintiff or of any one claiming by, through, or under him, and that the said plaintiff, Stanton Warburton, was directly enjoined, as well as all persons claiming or to claim by, through, or under him, from asserting any claim
40 or asserting any right, title, lien, interest, or estate into or upon said undivided one-third of said property or the possession thereof, and it was also provided by the said decree that the receiver heretofore appointed in the above-entitled action, namely, J. C. Weatherred, should surrender and deliver over to said Matilda B. White the possession of the undivided one-third of the whole of said property, and should pay over to said Matilda B. White two-thirds of all the moneys received or collected by him as such receiver in said action, less the amount of his compensation as allowed, and that all of the costs and expenses of said receivership should be borne by the plaintiff, and that the defendants Matilda B. White and Amelia McDonald should have and recover of and from the plaintiff, Stanton Warburton, the costs and disbursements in said cause, taxed at the sum of eighteen dollars, as well as the costs of said receivership; and

Whereas said plaintiff, Stanton Warburton, thereupon gave notice in open court of an appeal to the supreme court of the State of Washington from said decree and each and every part thereof hereinbefore recited; and

Whereas said Stanton Warburton has duly appealed to the supreme court of the State of Washington from each and every part of the decree hereinbefore described; and

Whereas said plaintiff, Stanton Warburton, desires to stay execution upon each and every part of said decree hereinbefore recited and upon the judgment for costs rendered against him in said cause; and

Whereas one of the judges of the above-named superior court has fixed and prescribed the sum of eight hundred dollars as the sum and amount of a supersedeas bond in order to effect a stay of proceedings upon the entire decree hereinbefore recited and upon the judgment for costs therein rendered; which said sum of
41 eight hundred dollars, fixed as the amount of the stay and supersedeas bond, is in addition to the bond for costs upon the appeal herein:

Now, therefore, the condition of this obligation is such that if the said appellant, Stanton Warburton, shall well and truly satisfy and perform the judgment or order appeal- from in case it shall be affirmed, and shall well and truly satisfy any judgment or order which the supreme court may render or make or order to be rendered or made by the superior court, and shall pay all rents or damages to property accruing during the pendency of the appeal, out of the possession of which any respondent shall be kept by reason of said appeal, not exceeding the said sum of eight hundred dollars in lawful money of the United States, then this obligation shall be null and void; otherwise to remain in full force and effect.

In witness whereof we have hereunto subscribed our names, at Tacoma, this the 19th day of November, 1897.

STANTON WARBURTON.
IRIS WARBURTON.
A. R. NICOL.

STATE OF WASHINGTON, } ss:
County of Pierce, }

Iris Warburton and A. R. Nicol, being severally duly sworn, each for himself and not one for the other, says that he is one of the sureties on the foregoing bond and obligation; that he is a resident of the State of Washington, and is worth the sum of eight hundred dollars in lawful money of the United States over and above all debts and liabilities in property within the State of Washington and exclusive of property exempt from execution.

IRIS WARBURTON.
A. R. NICOL.

Subscribed and sworn to before me this 19th day of November, 1897.

CHARLES A. MURRAY,
Notary Public in and for the State of Washington,
Residing at Tacoma, Pierce County, said State.

42 In the Superior Court of the State of Washington in and for the County of Pierce, Department 1.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON, AMELIA MCDONALD, and Matilda B. White, Defendants. } # 16229. Bond.

Know all men by these presents that we, Stanton Warburton, as principal, and Iris Warburton and A. R. Nicol, as sureties, are held and firmly bound unto the above named defendants and unto each one of them in the full sum of two hundred dollars, lawful money of the United States; for the payment of which sum, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Dated at Tacoma, Washington, this 19th day of November, 1897.

The condition of the above bond is such that heretofore and on the — day of November, 1897, in the above-entitled court a decree was rendered and made in the above entitled cause in favor of the above-named defendants, Matilda B. White and Amelia McDonald, and against the above-named plaintiff, Stanton Warburton, wherein it was ordered, adjudged, and decreed *inter alia* that the defendant Matilda B. White is the owner and entitled to the possession of an undivided one-third of the lot and premises in controversy in the above-entitled action, to wit:

Lot one (1), in block eleven hundred and five (1105), according to the map of New Tacoma, W. T., filed and recorded in the office of the auditor of said Pierce county, Washington, and that her title and estate therein was thereby quieted and established against any and all adverse claims of the plaintiff or of any one claiming by, through, or under him, and that the said plaintiff, Stanton
43 Warburton, was directly enjoined, as well as all persons claiming or to claim by, through, or under him, from asserting any claim or asserting any right, title, lien, interest, or estate in, to, or upon said undivided one-third of said property, or the possession thereof; and it was also provided by the said decree that the receiver heretofore appointed in the above-entitled action, namely, J. C. Weatherred, should surrender and deliver over to said Matilda B. White the possession of the undivided one-third of the whole of said property, and should pay over to said Matilda B. White two-thirds of all the moneys received or collected by him as such receiver in said action, less the amount of his compensation as allowed, and that all of the costs and expenses of said receivership should be borne by the plaintiff, and that the defendants, Matilda B. White and Amelia McDonald, should have and recover of and from the plaintiff, Stanton Warburton, the costs and disbursements in said cause, taxed in the sum of eighteen dollars, as well as the costs of said receivership; and

Whereas said plaintiff, Stanton Warburton, thereupon gave notice in open court of an appeal to the supreme court of the State of Washington from said decree and each and every part thereof; and

Whereas said Stanton Warburton has duly appealed to the supreme court of the state of Washington from each and every part of the decree hereinbefore described:

Now, therefore, if the said appellant, Stanton Warburton, will pay all costs and damages that may be awarded against him upon the said appeal or on the dismissal thereof, not exceeding the sum of two hundred dollars in lawful money of the United States, then this obligation shall be null and void; otherwise to remain in full force and effect.

In witness whereof we have hereunto subscribed our names, at Tacoma, this the 19th day of November, 1897.

STANTON WARBURTON.
IRIS WARBURTON.
A. R. NICOL.

44 STATE OF WASHINGTON, } ss.
County of Pierce, }

Iris Warburton and A. R. Nicol, being severally duly sworn, each for himself and not one for the other, says that he is one of the sureties on the foregoing bond and obligation; that he is a resident of the State of Washington, and is worth the sum of two hundred dollars in lawful money of the United States, over and above all debts and liabilities, in property within the State of Washington and exclusive of property exempt from execution.

IRIS WARBURTON.
A. R. NICOL.

Subscribed and sworn to before me this 19th day of November, 1897.

CHARLES A. MURRAY,
Notary Public in and for the State of Washington,
Residing at Tacoma, Pierce County, said State.

Filed 2.50 p. m. Nov. 20, 1897.
W. F. GRASS, *Clerk,*
By PETERSON, *Dep.*

45 In the Superior Court of the State of Washington in and for the County of Pierce, Department 1.

STANTON WARBURTON, Plaintiff,
vs.
ELLEN T. NELSON, AMELIA MCDONALD, and Matilda B. White, Defendants. } No. 16229. Notice.

To Amelia McDonald and Matilda B. White and to Chas. S. Fogg, attorney for Amelia McDonald and Matilda B. White:

You will please take notice that the appellant in the above cause, Stanton Warburton, has heretofore, on this 20th day of November,

1897, filed in the above cause his appeal bonds, copies of which are hereto annexed and herewith served upon you.

S. WARBURTON.
BATES & MURRAY,
SULLIVAN & CHRISTIAN,
Attorney- for Appellant.

Received a copy of the above notice and above-mentioned bonds this 20th day of Nov., A. D. 1897, at the hour of 3.05 p. m.

CHARLES S. FOGG,
Att'ys for Amelia McDonald and Amelia White.

Filed Nov. 23, 1897.
W. F. GRASS, *Clerk*,
By PETERSON, *Dep.*

46 In the Superior Court of the State of Washington for Pierce County.

STANTON WARBURTON, Plaintiff,
vs.
AMELIA MCDONALD ET AL., Defendant. } No. 16229. Certificate.

I, W. F. Grass, county clerk, and by virtue of the laws of the State of Washington *ex officio* clerk of the superior court of the State of Washington for Pierce county, do hereby certify that the annexed and foregoing is a true and correct copy of the complaint, answer, amended answer, reply, notice of trial, stipulation dismissing Ellen T. Nelson, agreed statement of facts, order dismissing Ellen T. Nelson, statement — constitutional questions raised, plaintiff's proposed findings, objections to defendants' findings, findings of fact and conclusions of law same as proposed by defendants, exceptions to findings of fact and conclusions of law, exceptions to findings of fact allowed, decree, exceptions to decree, notice of appeal, appeal bond (supersedeas), appeal bond (for costs), notice of filing appeal bond and trial record in the above-entitled action now on file in this office.

In witness whereof I have hereunto set my hand and seal of the said superior court, at my office, in the city of Tacoma, this 24th day of December, 1897.

W. F. GRASS, *Clerk*,
[SEAL.] By CHAS. PETERSON, *Deputy*.

47 Know all men by these presents that we, Stanton Warburton, as principal, and National Surety Company of New York, as surety, are held and firmly bound unto Matilda B. White and Amelia McDonald in the full and just sum of one thousand dollars, to be paid to the said Matilda B. White, Amelia McDonald, & their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of April, in the year of our Lord one thousand eight hundred and ninety- —.

Whereas lately, at a session of the supreme court of the State of Washington, in a suit depending in said court between Stanton Warburton, appellant, and Matilda B. White and Amelia McDonald, respondents, a judgment was rendered against the said Stanton Warburton and in favor of Amelia McDonald and Matilda B. White; and the said Stanton Warburton having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Matilda B. White and Amelia McDonald, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 60 days from the date thereof:

Now, the condition of the above obligation is such that if the said Stanton Warburton shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

STANTON WARBURTON. [SEAL.]
NATIONAL SURETY COMPANY,
By DAVID F. MURRY,
Resident Vice-President. [SEAL.]

Attest: LEWIS P. SHACKLEFORD, [SEAL.]
Resident Ass't Secretary.

Sealed and delivered in presence of—
—— ——.

Approved by—
R. W. PECKHAM,
Justice of the Supreme Court of the United States.

48 *Justification of Surety.*

STATE OF WASHINGTON, } ss:
County of Pierce, }

On this 25th day of April, 1898, before me personally came Lewis P. Shackleford, to me known to be the resident assistant secretary of the National Surety Company, a corporation described in and which executed the within and foregoing bond of one thousand dollars ($1,000.00), as surety thereon, and who, being by me duly sworn, did depose and say that the said National Surety Company is doing business in this State and is by law authorized to do business in this State as such surety company, and that said company has complied with all the provisions of the laws of this State and has been granted authority by the secretary of state of the State of Washington to do business within said State, and that he resides in the city of Tacoma, State of Washington; that he is the resident assistant secretary of said company and knows the corporate seal thereof; that the said National Surety Company is duly and legally incorporated under

the laws of the State of New York; that said company has complied with the provisions of the act of Congress of August 13th, 1894; that the seal affixed to the within bond of one thousand dollars ($1,000.00) is the corporate seal of said company and was thereto affixed by order and authority of the board of directors of said company, and that he signed his name thereto by like order and authority as resident assistant secretary of said company, and that he is acquainted with David F. Murry and knows him to be the resident vice-president of said company, and that the signature of the said David F. Murry, subscribed to said bond, is in the genuine handwriting of the said David F. Murry and was thereto subscribed by order and authority of said board of directors and in the presence of said deponent; that said corporation is worth, over and above all its debts or liabilities of every nature whatsoever, exclusive of all property exempt from execution, more than the sum of
49 $547,400; that James Bothwell is the duly authorized agent of said National Surety Company to acknowledge service of process upon it and for the judicial district where this bond is given.

LEWIS P. SHACKLEFORD.

Acknowledged, subscribed, and sworn to before me this 25th day of April, 1898.

J. H. McDANIELS,
[SEAL.] *Notary Public in and for Washington, Residing at Tacoma, Pierce County, Washington.*

Endorsed: Filed May 17, 1898. C. S. Reinhart, clerk.

50 STANTON WARBURTON, Appellant, *vs.* MATILDA B. WHITE ET AL., Respondents. } No. 2822.

Filed Feb. 3rd, 1898.

Per Curiam:

The question to be determined in this case is whether the husband succeeds to all the property which was purchased by himself and wife with community funds in this State (then a Territory) in 1878, or whether one-half of said property descends to the heirs of the wife. It is contended by the appellant that the property descends to the husband by right of survivorship, under the laws of 1873 and 1875, and a very painstaking and exhaustive brief has been filed in support of this contention. As an original proposition, the brief and argument of appellant would be exceedingly interesting, but the uniform holding of this court for the last fifteen years has been to the contrary This question was first decided adversely to appellant's contention in Holyoke *v.* Jackson, 3 Wash. Ty., 235, in the year 1882. The same question has been expressly decided by this court in Hill *v.* Young, 7 Wash., 33, and Mabie *v.* Whittaker, 10 Wash., 656, and incidentally decided in probably forty other cases, so that the rule announced by these cases has become the established

rule of law and of property in this State. Rights have been established and have grown up under these decisions which it would be wrong to now disturb, even if the court should conclude that the rule as originally announced was faulty. In consideration of this long-settled and well-established doctrine, we do not feel called upon to enter into a discussion of the questions involved.

The judgment will be affirmed.

51 STANTON WARBURTON, Appellant, *vs.* MATILDA B. WHITE ET AL., Respondents. } No. 2822. On Petition for Rehearing.

Filed March 8th, 1898.

Per Curiam:

This cause is before us on a petition for a rehearing, appellant asking a further consideration of the question before urged by him in his brief and on the oral argument, that the right of survivorship granted under the law of 1875 and the rights urged under the law of 1873 were vested, proprietary, and contractual rights, and that therefore later acts of the legislature could not deprive appellant of them, on the ground that it would impair the obligation of the contract by which the property was obtained, and thus be in conflict with the Constitution of the United States. If any of these questions are presented by the record it is sufficient to say that the court was and is of the opinion that section 2 of the act, Laws 1875, p. 53, was never in force to the extent of conferring a vested right of survivorship in favor of either spouse as to community property. As such it would have been void as not being embraced in the title of the act, and at most it could only be construed as a statute regulating the descent of property, and it was within the power of the legislature to change it, which was thereafter done. We were of the opinion, also, that even though it conferred a right to property by survivorship it could be taken away, and was by subsequent legislation, and that under the laws of 1873 no vested rights were conferred upon the husband as claimed, but that the same were within the power of the legislature to change thereafter, as was done. Rights such as are claimed by this appellant never were recognized or enforced here, either during territorial days or since, under
52 either of said acts, but the uniform holdings have been to the contrary, as stated in the former opinion.

The petition is denied.

53 In the Supreme Court of the State of Washington.

WEDNESDAY, *March 9th*, 1898.

STANTON WARBURTON, Appellant, *vs.* MATILDA B. WHITE ET AL., Respondents. } No. 2822. Judgment.

This cause (having) been heretofore submitted to the court on the transcript of the record of the superior court of Pierce county and

upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, and having filed its opinion in writing, it is now, on this 9th day of March, A. D. 1898, on motion of Charles S. Fogg, Esquire, of counsel for respondent-, considered, adjudged, and decreed that the judgment of the said superior court be, and the same is hereby, affirmed with costs, the petition for rehearing denied, and that the said Matilda B. White *et al.* have and recover of and from the said Stanton Warburton and from Iris Warburton and A. R. Nicol, sureties, the sum of fifty and $\frac{50}{100}$ dollars, the amount of the money judgment of the court below, together with the further costs of this action, taxed and allowed at forty-nine and no $\frac{}{100}$ dollars, and that execution issue therefor; and it is further ordered that this cause be remitted to the said superior court for further proceedings in accordance with the opinion herein filed.

STANTON WARBURTON, Appellant,
vs.
MATILDA B. WHITE ET AL., Respondents. } No. 2822. Order.

Upon reading the petition of the appellant herein for an order staying the remittitur herein until the further order of this court, and the court being fully advised in the premises, it is now here ordered that all proceedings in this cause be stayed, and the clerk is ordered to issue no remittitur in this cause until the further order of this court.

54 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Washington, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Stanton Warburton, appellant, and Matilda B. White and Amelia McDonald, respondents, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the
55 Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error,

if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 60 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Received a true copy of the foregoing writ of error for each of defendants in error, Amelia McDonald and Matilda B. White.

C. S. REINHART,
Clerk of the Supreme Court of the State of Washington.

[Endorsed:] 2822. Filed May 17, 1898. C. S. Reinhart, clerk.

56 UNITED STATES OF AMERICA, *ss:*

To Matilda B. White and Amelia McDonald, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 60 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Washington, wherein Stanton Warburton is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 25th day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

On this eighteenth day of May, in the year of our Lord one thousand eight hundred and ninety-eight, personally appeared before me the subscriber, J. H. McDaniels, and makes oath that he delivered a true copy of the within citation to Matilda B White and Amelia McDonald and to their attorney, Charles S. Fogg.

J. H. McDANIELS.

Sworn to and subscribed the 18th day of May, A. D. 1898.

{Seal of Frederick A. Brown, Notary Public, State of Washington. Commission expires Aug. 13, 1899.}

FREDERICK A. BROWN,
Notary Public for Washington, Residing at Tacoma, Wash.

Received a copy of the within citation this 18th day of May, 1898.

MATILDA B. WHITE.
AMELIA C. McDONALD.

[Endorsed:] 2822. Filed May 25, 1898. C. S. Reinhart, clerk.

57 In the Supreme Court of the State of Washington.

STANTON WARBURTON, Plaintiff in Error,
v.
MATILDA B. WHITE ET AL., Defendants in Error. } No. 2822.

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, hereby certify that the above and foregoing is a full, true, and correct transcript of the record in the above-entitled cause, and in pursuance of the writ of error from the Supreme Court of the United States to the supreme court of the State of Washington I herewith transmit said record, together with the original writ of error filed herein, the original citation, and a copy of the bond on appeal, to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 2d day of June, 1898.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk.*

Endorsed on cover: Case No. 16,925. Washington supreme court. Term No., 101. Stanton Warburton, plaintiff in error, *vs.* Matilda B. White and Amelia McDonald. Filed June 29, 1898.